* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NO. 227 OF 2007**

% **Date of Decision** : 21st September, 2007.

D.T.C. .... Appellant.

Through Mr. Vibhu Shankar, Advocate.

VERSUS

D.T.C. RETIRED EMPLOYEES ASSOCIATION & ORS. ....

Respondents.

Through Mr. Narottam Vyas, Advocate.

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

} Yes.

O R A L

1. The present appeal is directed against the order dated 26th September 2007, passed by the Learned Single Judge. By the said impugned order the learned judge directed the appellant herein, the

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Delhi Transport Corporation (hereinafter called the DTC) to pay the pension of the respondents nos. 2 and 3 according to the provisions of the Voluntary Retirement Scheme of DTC. The contention of the Appellant is that the respondents 2 and 3 have not completed the requisite length of 10 years of service that would qualify them for the benefits under the Pension Scheme.

2. Respondent nos. 2 and 3 were employed in DTC from 1st August 1983 and 19th January 1983 respectively, and retired on 31st July 1993 and 31 December 1993 respectively, in terms of the VRS introduced by the Appellant. It is the contention of DTC that the total service of the respondent no. 2 was 9 years 11 months and 30 days out of which about 1 and a half years is to be deducted on account of the leaves availed of by the said respondent as per the service book records. As far as the respondent no. 3 is concerned it is submitted by the appellant that he had completed a total service period of 10 Years 11 Months and 12 Days, out of which a period of 2 Years 11

Months and 1 Day is to be deducted as non qualifying service on account of the leaves availed by the said respondent.

3. The Pension Scheme was introduced by DTC on 27th November 1992. The Voluntary Retirement Scheme was introduced by the appellant on 3rd March 1993. In order to decide on the claims and counter claims of the two parties it is pertinent to quote from the scheme as it was notified on 3rd March 1993, the eligibility criteria as laid down in the said notification reads as follows:

> "The employee must have completed ten years of service in this corporation or completed 40 years of age to qualify for consideration under the scheme. For this purpose, period of deputation/ retention of lien in the parent office in lieu of deputation prior to absorption in the regular service of the corporation will be excluded."

4. The respondent nos. 2 and 3 had opted for the Voluntary Retirement Scheme after the said Scheme was made applicable to all the employees of DTC by office order 16th March 1993.

Subsequently by another order dated 29th March 1993 it was announced that the employees whose request for VRS was accepted would be eligible for an ex-gratia payment.

5. It is the monthly pension that is the point of contention between the two parties. The said dispute arose because the DTC decided to deduct the total leave period from the period of service to calculate the qualifying service for the purpose of eligibility for Pension. The problem that stands before us requires us to construe the meaning of the "ten years" and "qualifying service" used with respect to the Pension Scheme and the VRS in a harmonious manner rather than in a manner that would lead to disjointed and incongruous results. For this purpose the terms "ten years" and "qualifying service" have to be assigned the same meaning in both the Schemes. It cannot be said that the respondents had put in ten years service for VR Scheme, but not for the Pension Scheme. Ten years period specified in the VR Scheme is the foundation of the Scheme, as only after putting in ten years' service, that an employee is entitled to pension. The period of

ten years as specified in the two Schemes are inter-related and connected. Further, even at the time of processing the application of the said respondents the Appellant - Corporation had the opportunity to put the respondents on notice of the above mentioned exclusions from their total period of service that would have allowed the respondents herein to exercise the option with complete knowledge of the attendant repercussions.

6. We can also refer to the decision of a Division Bench of this court in the case of **DTC versus Ved Prakash** (*LPA no. 1187/2006, decided on 24/11/2006*) wherein while dealing with similar set of facts the Court opined that – had the DTC not assured Pension, the Employees would not have opted for the VRS, hence, having granted the VRS once, the Corporation could not go back on its commitment. It is indeed intriguing to note that while the eligibility clause is explicitly clear about the various exclusions from the service of the employee for the purpose of calculating the qualifying period of service that would make them eligible for the benefits of the scheme

floated by the DTC. However, the corporation in its own wisdom has decided not to clarify that the period for which the employees were on leave during their period of employment shall be deducted from their service for the purpose of calculating the period that would qualify them for pension benefits. It would be unfair to refuse the respondents the pension benefits in a situation where they were not put to notice of the various conditions that would come in to play before the actual qualifying service would be calculated.

7. It would be helpful to draw an analogy from the Indian Contract Act for the purpose of clarifying the position in respect of a situation where the parties to a contract are in a mistake of a fact that is essential to the contract. Section 20 of the Indian Contract Act 1872 postulates as follows:

> "Section 20 – Where both parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void."

8. Two individuals or persons can only agree and be ad idem if

they know the material factual basis of the agreement. One cannot have a binding agreement until and unless the parties agree on the essential facts which form foundation of a contract that they are seeking to enter into.

9. In view of the circumstances, we find that the employees were not informed about the essential condition and the eligibility criteria for payment of pension in the Voluntary Retirement Scheme. The fault was of the appellant. In our considered opinion the order of the learned Single Judge requires no interference. The Appeal is dismissed. In view of the facts the parties shall be bear there own costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

SEPTEMBER 21, 2007.

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